

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Thomas Matson, et al.

Court File No. 17-cv-4571 (JNE/LIB)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

Mipro US, Inc., et al.,

Defendants.

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. 636(b)(1)(A).

On October 6, 2017, Plaintiffs Thomas Matson, Marie Matson, and Robert Waletzko initiated the present case, naming as Defendants Mipro US, Inc.; Mipro Ortho Pte. Ltd.; Maxx Health, Inc.; Maxx Orthopedics, Inc.; Portland Orthopaedics Limited; Metalicity Limited; Orchid Orthopedic Solutions, LLC; and multiple John Doe Defendants. (Compl. [Docket No. 1]).

On February 6, 2018, the undersigned issued an Order, [Docket No. 26], noting that more than 120 days had passed since Plaintiffs commenced the present action, and Plaintiffs had not yet provided proof that they have served a summons and a copy of the Complaint on Defendant Mipro Ortho Pte. Ltd.; Portland Orthopaedics Limited; and Metalicity Limited, nor had they informed the Court of any ongoing or unsuccessful attempts at service of these Defendants. Accordingly, the undersigned instructed Plaintiffs to file, within 20 days, on CM/ECF proof of service or a Status Update regarding efforts to serve Defendants Mipro Ortho Pte. Ltd., Portland Orthopaedics Limited, and Metalicity Limited. (Id.). The undersigned cautioned Plaintiffs that if they failed to comply with these directives, the undersigned would

recommend that this action be dismissed as to the claims against Defendants Mipro Ortho Pte. Ltd., Portland Orthopedics Limited, and Metalicity Limited for failure to effect proper service and failure to prosecute.

It has now been more than twenty (20) days since the Court's February 6, 2018, Order, and Plaintiffs have not yet filed on CM/ECF proof of service or a Status Update regarding efforts to serve Defendants Mipro Ortho Pte. Ltd., Portland Orthopedics Limited, and Metalicity Limited. Nor have Plaintiffs advised the Court of any good cause for such failure.

Consequently, the Court finds that Plaintiff has failed to abide by the terms of the Court's Order of February 26, 2018, [Docket No. 26]. Because the Court forewarned Plaintiffs of the potential consequences of failure to abide by the Court's order, the Court recommends that this action as brought against Defendants Mipro Ortho Pte. Ltd., Portland Orthopedics Limited, and Metalicity Limited be dismissed for failure to comply with the Court's Order of February 6, 2018, [Docket No. 6], for failure to effect proper service, and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED:**

That this action as brought against Defendants Mipro Ortho Pte. Ltd., Portland Orthopedics Limited, and Metalicity Limited be **DISMISSED without prejudice**, for Plaintiff's failure to comply with the Court's Order of February 6, 2018, [Docket No. 26], for failure to effect proper service, and for lack of prosecution.

Dated: March 12, 2018

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

N O T I C E

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “A party may file and serve specific written objections to a magistrate judge’s proposed findings and recommendation within 14 days after being served with a copy of the recommended disposition[.]” A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).